IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

ITA No. 89 of 2007

Date of decision 14 .8 .2007

The Commissioner of Income Tax, Faridabad ..appellant

Versus

Sankalp Welfare Society, Gurgaon .. Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

PRESENT: Mr. Yogesh Putney, Advocate for the Revenue.

Mr. Rajiv Sharma, Advocate for the assessee.

M.M.Kumar, J.

The revenue has approached this Court claiming that the following substantial question of law would emerge from order dated 9.6.2006 passed in ITA No 546/DEL/2006 by the Income Tax Appellate Tribunal Delhi "D" Bench SMC New Delhi in respect of assessment year 2002-03.

" 1. On the facts and in the circumstances of the case, whether the Hon'ble Tribunal was right in allowing the exemption of section 11 of the assessee even though it had failed to fulfill the statutory requirement of filing audit report in Form No.10B as provided by section 12A(b) of the Income Tax Act,1961;

2.Without prejudice to the ground at serial no.1 above, and on the facts and circumstances of the case, whether the Hon'ble ITAT was right in relying on the decision in the case of Commissioner of Income Tax v. Punjab Financial Corporation

(254 ITR 6 (P&H), when there is no mandatory requirement in Section 32AB of the Income Tax Act,1961 to submit the audit report alongwith the return of income.

c) Without prejudice to the ground at Sr. No. 1 and 2 above, whether the Hon'ble ITAT was right in relying on the decision in the case of Commissioner of Income Tax v. Devradhan Mahavlal Genda Trust (230 ITR 714) although the audit report was not filed during the assessment proceedings, but during the appellate proceedings."?

At the outset Mr.Rajiv Sharma, learned counsel for the assessee, has submitted that the controversy raised in this case stands settled by a Full Bench judgement of this Court in the case of CIT v. Punjab Financial Corporation (2002) 254 ITR 6 wherein it has been held that the provisions of Section 32 AB(5) of the Act are not mandatory and the Assessing Officer has the discretion to entertain the audit report even though the same was not filed alongwith the return for grant of benefit of deduction to the assessee in terms of Section 32AB(1) of the Act. He has also submitted that the view taken by the Full Bench of this Court in the case of Punjab Financial Corporation (supra) has been followed and applied by a Division Bench of Madras High Court in the case of Commissioner of Income tax v. Print Systems and Products (2006) 284 ITR 260.

Learned counsel for the revenue could not controvert the aforesaid submission nor he could point out any distinguishing feature which may warrant a different view.

In view of the above and for the reasons given in the judgements afore-mentioned , the questions claimed by the Revenue are

answered in favour of the assessee and against the revenue. The appeal is disposed of accordingly.

(M.M.Kumar)
Judge

(Ajay Kumar Mittal)
Judge

14.8.2007
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